

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARIAM DAVITASHVILI, ADAM
BENSIMON, MIA SAPIENZA, PHILIP
ELIADES, JONATHAN SWABY, JOHN
BOISI, NATHAN OBEY, and MALIK
DREWEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

GRUBHUB INC., UBER TECHNOLOGIES,
INC., and POSTMATES INC.,

Defendants.

Civ. No. 1:20-cv-03000-LAK

**PLAINTIFFS' MOTION FOR LEAVE TO RE-FILE
AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs hereby move for leave to re-file their Amended Consolidated Class Action Complaint. In support of their motion, Plaintiffs state as follows.

1. On April 13, 2020, Plaintiffs Mariam Davitashvili, Adam Bensimon, and Mia Sapienza (the “Davitashvili Plaintiffs”) commenced this action in this district, naming Grubhub Inc., Uber Technologies, Inc. (in its own right and as a parent of its wholly owned subsidiary Uber Eats), Postmates Inc., and DoorDash Inc. as defendants. (*See* Case No. 1:20-cv-03000, ECF No. [1].)

2. On July 6, 2020, Plaintiffs Philip Eliades, Jonathan Swaby, John Boisi, and Nathan Obey (the “Eliades Plaintiffs”) filed a related action in this district, naming Grubhub Inc., Uber Technologies, Inc., and Postmates Inc. as defendants. (*See* Case No. 1:20-cv-05134, ECF No. [1].)

3. On July 20, 2020, this Court entered an order consolidating the action filed by the Davitashvili Plaintiffs and the action filed by the Eliades Plaintiffs. (*See* Case No. 1:20-cv-03000, ECF No. [22].)

4. On July 21, 2020, this Court entered a scheduling order for the consolidated action. (*See* Case No. 1:20-cv-03000, ECF No. [23].) Pursuant to that order, Plaintiffs were permitted to file an amended class complaint in the consolidated action on or before August 19, 2020. (*Id.*)

5. On August 19, 2020, the Davitashvili Plaintiffs, the Eliades Plaintiffs, and an additional plaintiff, Malik Drewey, filed an Amended Consolidated Class Action Complaint. (*See* Case No. 1:20-cv-03000, ECF No. [24].) In that complaint, Plaintiffs asserted claims against Grubhub Inc., Uber Technologies, Inc., and Postmates Inc. Plaintiffs did not assert claims against DoorDash Inc.

6. On August 20, 2020, the Clerk's office published a notice on the docket stating that the filing was deficient because "the PDF attached to the docket entry for the pleading is not correct; all of the parties whom the pleading is against are not listed on the PDF case caption; add them to the caption OR do not select them as parties whom the pleading is against." The notice further indicated that "due to deficient filing on the due date, Court's leave must be granted."

7. Although the Amended Consolidated Class Action Complaint was correct, when filing that document, Plaintiffs inadvertently selected entities not named in the Amended Consolidated Class Action Complaint as parties. In particular, Plaintiffs selected DoorDash Inc. as a party, but that entity is not named as a party in the Amended Consolidated Class Action Complaint.

8. Plaintiffs ask this Court to grant leave to re-file the Amended Consolidated Class Action Complaint. If permitted to re-file, Plaintiffs will not select DoorDash Inc. as a party.

9. Plaintiffs do not bring this motion for unnecessary delay or to burden the Court or the parties.

WHEREFORE, Plaintiffs respectfully ask this Court for leave to re-file Plaintiffs' Amended Consolidated Class Action Complaint.

Dated: August 20, 2020

By: /s/ Gregory A. Frank

Gregory A. Frank (GF0531)
Marvin L. Frank (MF1436)
Asher Hawkins (AH2333)
FRANK LLP
370 Lexington Avenue, Suite 1706
New York, New York 10017
Tel: (212) 682-1853
Fax: (212) 682-1892
info@frankllp.com

/s/ Kyle W. Roche

Kyle W. Roche
Edward Normand
Stephen Lagos
ROCHE CYRULNIK FREEDMAN LLP
99 Park Avenue, 19th Floor
New York, NY 10016
kyle@rcfllp.com
tnormand@rcfllp.com
slagos@rcfllp.com

Attorneys for Plaintiffs